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Report of the Secretary-General on Ethiopia and Eritrea

I. Introduction

1. The present report is submitted pursuant to paragraph 12 of Security Council resolution 1320 (2000) of 15 September 2000 and provides an update on developments since my special report of 15 December 2006 (S/2006/992). The report also describes the activities of the United Nations Mission in Ethiopia and Eritrea (UNMEE), the current mandate of which expires on 31 January 2007.

II. Status of the Temporary Security Zone and adjacent areas and cooperation with the parties

2. The military situation in the Temporary Security Zone and the adjacent areas has remained tense and volatile, since over 2,000 troops of the Eritrean Defence Forces (EDF), along with tanks, artillery and air defence equipment, began entering the Zone in Sector West in October 2006. These troops have reportedly remained in the general areas of Maileba and Om Hajer. Since then, further infiltration of EDF troops has continued in Sector West and has also extended to Sector Centre. On 22 December, UNMEE reported an incursion into the Zone in Sector Centre by approximately 350 Eritrean militia suspected to be EDF soldiers, through the Keskese checkpoint, heading towards Senafe. Since then, there has reportedly been a significant increase in the activities of armed Eritrean personnel in Sector Centre, in the area of Tsorena, close to the southern boundary of the Zone, and the presence of over 400 additional Eritrean soldiers in the Sector has been observed.

3. Eritrea has further increased its restrictions on UNMEE patrols, especially in Sectors West and Centre, where the Mission is prevented from monitoring the activities of Eritrean armed personnel. Also, between 6 and 8 January, UNMEE vehicles were not allowed to travel between Asmara and Adigrat across a checkpoint located at the Serha post, in Sector Centre. All these restrictions represent a serious violation of the Agreement of 18 June 2000 on Cessation of Hostilities and the Protocol concluded between Eritrea and UNMEE on 17 April 2001.

4. On the Ethiopian side, since 20 October, the Ethiopian Armed Forces (EAF) have also increased their presence with the deployment of 21 artillery guns and four 120 mm mortars in the area of Rawiyan, in the adjacent area, in Sector West. UNMEE has also observed a forward deployment of artillery by the EAF in a number of places, including about 16 artillery guns in the vicinity of Adi Takalo

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(in Sector West); and an unspecified number of guns at Rama and Kafna (in Sector Centre).

5. On 28 October 2006, the Ethiopian authorities reported to UNMEE that one of their soldiers had entered the Temporary Security Zone without authorization, in Subsector East. Soldiers from his unit who were sent in his pursuit also entered the Zone and were allegedly fired upon by Eritrean militia, resulting in injury to one of the Ethiopians. The incident was confirmed by the Eritrean authorities, who presented to UNMEE the soldier who claimed to have defected and stated that another Ethiopian soldier had been killed during the exchange of fire. The Ethiopian side subsequently stated that there were no soldiers missing from their ranks.

6. The EAF also reported that on 21 November 2006, approximately 150 EDF personnel penetrated an EAF post and civilian farmhouses in the vicinity of the Terawar primary school in Sector Centre. The EAF further reported to UNMEE that, on 7 December, approximately 30 armed Eritrean soldiers had crossed the southern boundary of the Temporary Security Zone and fired at an Ethiopian observation post near Ksadhanse village, in Sector Centre close to the Mereb Bridge. Ethiopian soldiers reportedly returned fire. While both sides claimed that they had inflicted casualties, neither has recognized the claim of the other. On 4 January, a firing incident occurred at an Ethiopian military post located at Adi Hanna, in the adjacent area of Sector West. A local Ethiopian commander alleged that a number of Eritrean soldiers had attacked his position but were pushed back after a short fight. The Eritrean militia at the nearest camp confirmed that they had heard the firing but could not determine its source.

7. UNMEE is still investigating the above incidents, but is not in a position to confirm the reports, mainly owing to the restrictions on its movements imposed by Eritrea and the absence of observation posts in the concerned areas.

Freedom of movement

8. As I mentioned in paragraph 3, during the reporting period, UNMEE patrols were subjected to additional restrictions on their freedom of movement, as well as denials of access, in many areas of Sectors West and Centre, both inside the Temporary Security Zone and in the adjacent areas, especially after Eritrea's induction of troops in Sector West. In addition, Eritrea has closed the bridge at Humera, which is critical for UNMEE's cross-border movement in Sector West and, in particular, the contacts and logistical support between its personnel deployed at Om Hajer, inside the Zone and Humera, in the adjacent area on the Ethiopian side.

9. On 16 December, an UNMEE patrol from Adi Quala was stopped at gunpoint, threatened and temporarily detained by Eritrean armed militia inside the Temporary Security Zone in Sector West. UNMEE has strongly protested the incident with the Eritrean authorities, who agreed to look into the matter.

Military Coordination Commission

10. The 38th meeting of the Military Coordination Commission has still not been held, owing to differences between the parties, as was reported in the special report of 15 December (S/2006/992). UNMEE, however, continued to engage the parties in order to secure agreement on the date and venue for the next meeting of the Commission, which has played an important role by offering a unique forum for the

parties to discuss directly security and military issues. I therefore appeal to both sides to reconsider their respective positions, cooperate with UNMEE and renew their participation in the Commission.

III. Status of the Mission and related issues

11. As of 9 January 2007, the total strength of the UNMEE military component stood at 2,285, comprising 2,004 troops, 56 headquarters staff and 225 military observers (see annex I for details).

12. The decision by Eritrea not to cooperate with my Acting Special Representative, Azouz Ennifar, has further severely constrained the operations of the Mission's senior management. Meanwhile, the Eritrean authorities continued to arrest and detain locally recruited staff of UNMEE, usually on the grounds that the staff members did not fulfil national service obligations. As of 8 January, five staff members remained in detention. In addition, upon being released from detention, some of these staff members have been warned by the Eritrean authorities not to return to their employment with the Mission. Those arrests and detentions have affected morale among the local staff. They contravene the model status-of-forces agreement, and I therefore wish to appeal to the Eritrean authorities to comply with their obligations in this regard.

13. In a letter addressed to the President of the Security Council dated 3 January 2007 (S/2007/4), the Permanent Representative of Eritrea to the United Nations made a number of comments on the special report issued on 15 December 2006 (S/2006/992), including with regard to the appointment of the Acting Special Representative, the movement of EDF troops into the Temporary Security Zone and the restrictions imposed on UNMEE.

14. For its part, Ethiopia continued to enforce customs regulations on the Mission's supplies. The authorities still require UNMEE to present a manifest of the items meant for shipment into the country, despite the status-of-forces agreement signed by the Government and the United Nations.

IV. Eritrea-Ethiopia Boundary Commission

15. In its twenty-second report, contained in annex II of the present report, the Eritrea-Ethiopia Boundary Commission reiterated its decision announced in its statement of 27 November 2006, and indicated its willingness to provide assistance in emplacing the boundary pillars during the coming 12 months, if the Parties jointly so requested and provided assurances of cooperation and security. So far, neither party has responded to the statement. Meanwhile, the Commission is closing its field office in Addis Ababa and reducing its related activities.

V. Mine action

16. On 24 December 2006, a mine incident occurred on the Shilalo-Sheshibit road in Sector West when a vehicle struck an explosive device. However, the militia commander at Shilalo would not permit UNMEE staff to travel to the scene to conduct an investigation. In addition, two separate mine incidents occurred on 1 and

10 January. In the first incident, an Ethiopian army truck hit an anti-tank mine at Badme, in Sector West, killing one soldier and injuring three others. There were no injuries reported in the second incident; however, the Ethiopian army water truck, which was travelling between Badme and Dembe Gadamu, was damaged when it also hit an anti-tank mine. UNMEE is investigating those incidents.

17. Since September 2006, the Mission's demining assets cleared some 2,200,000 square metres of land and almost 1,200 kilometres of road. The Mission's explosive ordnance disposal teams, which operate on both sides of the Temporary Security Zone, destroyed 375 unexploded ordnance items, two anti-tank mines and four anti-personnel mines.

18. UNMEE also conducted mine-risk education activities in Sectors West and Centre, with over 1,300 people of different age groups benefiting from these activities. The Mission further carried out routine mine-awareness briefings for newly arrived military observers, force contingent members, and civilian and military staff.

VI. Human rights

19. UNMEE continued to monitor and investigate various cross-border incidents that relate to the conflict, including cases of abduction between the two countries. The Mission also observed an increase in illegal border crossings.

20. UNMEE also monitored the repatriation of Eritrean and Ethiopian nationals, which took place under the auspices of the International Committee of the Red Cross. Some 650 Ethiopians living in Eritrea were voluntarily repatriated via the Mereb Bridge, while 18 Eritrean nationals were similarly repatriated from Ethiopia. It is essential that both parties ensure that the repatriations remain voluntary and that they are carried out in a proper and dignified manner.

21. In the meantime, UNMEE has been receiving increasing requests for the implementation of technical cooperation projects and human rights awareness activities that target the most vulnerable groups in Ethiopia. The Mission has obtained funds from the Office of the United Nations High Commissioner for Human Rights to implement capacity-building projects in Ethiopia and Eritrea. UNMEE also intends to launch two human rights workshops on the treatment of prisoners and detainees, as well as violence against women. Workshops are also planned on the rights of internally displaced persons and refugees, as well as training for police officers and prosecutors.

VII. Humanitarian developments

22. My Special Humanitarian Envoy for the Horn of Africa, Kjell Magne Bondevik, visited Eritrea from 13 to 18 October 2006 and met with President Isaias Afwerki, other senior Government officials, the United Nations country team, as well as representatives of civil society and the donor community. The visit allowed Mr. Bondevik to assess the overall humanitarian situation and to follow up on issues raised during his previous visit in April 2006.

23. The humanitarian situation in Eritrea continued to be a source of serious concern, as high malnutrition rates persist among the many vulnerable communities, exceeding emergency levels in some regions. Access to basic social services remains inadequate, particularly in rural areas, where almost 70 per cent of the population lack access to health services and some 40 per cent are without safe drinking water. Eritrea's production of cereal remains below the estimated total requirements of 500,000 to 600,000 tons, and the country therefore largely depends on commercial imports. The lack of strategic dialogue and coordination between the humanitarian organizations and the Government has prevented a more comprehensive analysis of the severity and scope of the humanitarian situation in the country. Moreover, the Government's decision to integrate the relief food provided by the World Food Programme into its new cash-for-work strategy has further strained relations with the donor community.

24. Since the last progress report, Eritrea has ordered two more international non-governmental organizations, the International Rescue Committee and Samaritan's Purse, to leave the country. The two organizations were informed that their operational and work permits would not be valid as of 15 November 2006. The reason given to both charities was that the Eastern Sudan Peace Agreement, signed by the Government of National Unity of the Sudan and the Eastern Front on 14 October 2006, had rendered cross-border operations redundant. With this latest departure, the total number of international non-governmental organizations operating in Eritrea has dropped from 37 in early 2005 to 10 at present. The remaining non-governmental organizations continue to face operational difficulties, including restrictions in obtaining travel permits, conducting assessments as well as delays in government approval of programmes.

25. In the meantime, humanitarian partners continued to respond to the needs generated in Ethiopia by the nationwide floods of August and September 2006. The United Nations agencies, non-governmental organizations, donors and private individuals have responded to a joint Government and Humanitarian Partner Flash Appeal requesting US$ 27.1 million. To date, more than US$ 18.5 million has been donated. New and unprecedented flooding also took place in Ethiopia's Somali region. To address this natural disaster, two helicopters were provided by the Humanitarian Air Service of the World Food Programme to distribute essential non-food and food items to the populations unreachable by road. On 23 November, the Government and the United Nations launched a joint emergency flood appeal requesting a total of some US$ 7 million to meet emergency non-food requirements, as well as medium-term rehabilitation needs for the flood-affected areas of the region. In addition, a joint national coordination committee, headed by the Federal Ministry of Health, has been established to combat malaria and waterborne diseases.

26. Meanwhile, UNMEE continued to facilitate humanitarian operations in the Temporary Security Zone, providing agencies with information on the humanitarian situation inside the buffer zone, which is vital for conducting assessments and responding to the needs of resettled internally displaced persons. Furthermore, ongoing demining activities by UNMEE, including continuous route clearance, have been critical for maintaining access to the Zone by humanitarian agencies.

HIV/AIDS activities

27. UNMEE continued to provide active induction training to all incoming military and civilian personnel, and to conduct awareness sessions to contingent members, in an effort to encourage group behaviour change. UNMEE also offers voluntary counselling and testing services for all Mission personnel, although some contingents are deploying with national voluntary counselling and testing capabilities. The Mission also facilitated HIV/AIDS-awareness training workshops for members of Eastern Zone women and youth associations in the Ethiopian border town of Adigrat.

Conduct and discipline

28. The current UNMEE budget includes provision for setting up a dedicated Conduct and Discipline Unit in the Mission. The process of appointing core staff members to this unit is already in progress. In the meantime, the office of my Acting Special Representative continued to exercise oversight responsibility for conduct and discipline issues, working in close collaboration with the Office of Internal Oversight Services. Two cases of reported serious misconduct that emerged during the reporting period have been investigated; findings and recommendations are expected shortly.

VIII. Public information

29. Recent developments in the Mission area led to a growing local demand for information on the work of UNMEE, in general, and on the peace process, in particular. To ensure an accurate dissemination of information to the general public, the Mission increased the publication of information in key local languages, such as Amharic and Tigrinya. The Mission's three outreach centres located in Addis Ababa, Adigrat and Mekelle continue to be a major outlet of information on the activities of the Mission and the United Nations in general.

30. Meanwhile, Radio Eritrea has suspended the weekly broadcasts of the UNMEE radio programme because of the failure of its transmitter network. To ameliorate the situation, UNMEE has engaged both Radio Ethiopia and the Eritrean authorities in an effort to secure airtime for the programme on their respective national FM channels. Meanwhile, the short-wave broadcasts of the programme continued over the Horn of Africa through satellite transmission.

IX. Financial aspects

31. By its resolution 1710 (2006) of 29 September 2006, the Security Council extended the mandate of UNMEE until 31 January 2007. The General Assembly, by its resolution 61/248 of 22 December 2006, reduced the appropriation of $174,679,200 previously authorized for the maintenance of UNMEE for the period from 1 July 2006 to 30 June 2007 to $137,385,100. Thus the total amount appropriated to the Special Account for UNMEE for the period has been adjusted to $144,943,700 (gross) inclusive of $6,243,100 for the support account for peacekeeping operations and $1,315,500 for the United Nations Logistics Base. Of

this amount, $91,118,900 has been apportioned among Member States for the period from 1 July to 31 December 2006.

32. By the same resolution, the General Assembly also decided to apportion the amount of $53,824,800 among Member States for the period from 1 January to 30 June 2007 at a monthly rate of $8,970,800, subject to the decision of the Security Council to extend the mandate of the Mission. Should the Council decide to extend the mandate of UNMEE beyond 31 January 2007, the cost of maintaining the Mission until 30 June 2007 would be limited to the amounts approved by the General Assembly. As at 30 November 2006, unpaid assessed contributions to the Special Account for UNMEE amounted to $64.8 million. The total outstanding assessed contributions for all peacekeeping operations as at that date amounted to $2.2 billion.

X. Observations

33. The ongoing dangerous stalemate in the peace process between Ethiopia and Eritrea remains a source of very deep concern. Not only does the overall situation remain unsettled, but it has also continued to worsen over the last month, with neither party showing any sign of willingness to take the necessary steps to break the current impasse. The potential for this situation to deteriorate further or even to lead to renewed hostilities is real, especially if it is allowed to continue indefinitely. The current impasse is a serious source of instability for the two countries as well as the wider region, taking into account, in particular, the recent developments in Somalia.

34. Ethiopia's refusal to implement — fully and without preconditions — the final and binding decision of the Boundary Commission remains at the core of the continuing deadlock. I therefore strongly urge the Government of Ethiopia to comply with the demand of the Security Council, expressed in resolution 1640 (2005) and reiterated in resolution 1710 (2006). Full implementation of the latter resolution remains key to moving forward the demarcation process and to concluding the peace process.

35. The continued and increasing presence of Eritrean troops and heavy military equipment inside the Temporary Security Zone has brought the armed forces of the two countries into immediate proximity to each other, seriously heightening tension in many parts of the border area. This situation represents a serious challenge to the Agreement on the Cessation of Hostilities of 18 June 2000 and, in particular, to the integrity of the Zone. I strongly urge the Government of Eritrea to withdraw its troops and military equipment from the Temporary Security Zone.

36. As mentioned on numerous previous occasions by my predecessor as well as the Security Council and individual Member States, the numerous restrictions imposed by Eritrea on the operations of UNMEE are counterproductive and unjustifiable. I wish to remind the Eritrean leadership that UNMEE was established, and remains deployed, at the invitation of the two Governments. I therefore call on Eritrea to lift all restrictions, in compliance with Security Council resolutions 1640 (2005) and 1710 (2006).

37. The statement of the Boundary Commission of 27 November 2006 gave the parties an additional 12 months to proceed with the emplacement of boundary pillars and thus to complete the demarcation process, which is long overdue. I sincerely hope that both sides, and Ethiopia in particular, will seize this opportunity to proceed with demarcation in accordance with the Boundary Commission's decisions. The United Nations, and I personally, stand ready to assist them, in order to achieve the full implementation of the letter and spirit of the Algiers Agreements at the earliest possible opportunity.

38. Clearly, while the establishment of an internationally recognized border is essential, it is not sufficient to create sustainable peace and reconciliation between Ethiopia and Eritrea. The two Governments need to take the political decision to put the conflict behind them, for the sake of their own people, and move forward in a number of other areas that would help them to normalize relations. In this connection, I encourage the international community, especially individual Member States with close relations with the two Governments, to help them take the necessary steps to implement the Boundary Commission's decisions, establish a dialogue and restore good-neighbourly relations that would allow both countries to concentrate all their energies on social and economic development. In the meantime, in view of the continued contribution of the peacekeeping operation to the maintenance of the ceasefire and the overall stability of the region, I recommend that the Security Council extend the mandate of UNMEE for a further period of six months, while keeping in mind the recommendations contained in my special report of 15 December 2006.

Annex I

United Nations Mission in Ethiopia and Eritrea: military contributions as at 12 November 2006

Country	*Military observers*	*Troops*	*Staff*	*Total*	*National support elements*
Algeria	8			8	
Austria	2			2	
Bangladesh	9		6	15	
Bolivia	5			5	
Bosnia and Herzegovina	8			8	
Brazil	5			5	
Bulgaria	5			5	
China	7			7	
Croatia	4			4	
Czech Republic	2			2	
Denmark	4			4	
Finland	5			5	
France	1			1	
Gambia	3		1	4	
Germany	2			2	
Ghana	12		2	14	
Greece	3			3	
Guatemala	2			2	
India	8	970	12	990	
Iran (Islamic Republic of)	3			3	
Jordan	8	827	12	847	
Kenya	10	174	4	188	
Kyrgyzstan	4			4	
Malaysia	7		3	10	
Mongolia	5			5	
Namibia	4		3	7	
Nepal	5			5	
Nigeria	7		2	9	
Norway	4			4	
Pakistan	5			5	
Paraguay	4			4	
Peru	3			3	
Poland	6			6	
Romania	5			5	
Russian Federation	3			3	

Country	*Military observers*	*Troops*	*Staff*	*Total*	*National support elements*
South Africa	5			5	
Spain	3			3	
Sweden	3			3	
Switzerland	2			2	
Tunisia	3		3	6	
Ukraine	5			5	
United Republic of Tanzania	8		2	10	
United States of America	2			2	
Uruguay	5	33	3	41	
Zambia	10		3	13	
Total	**225**	**2 004**	**56**	**2 285**	

Annex II

Eritrea-Ethiopia Boundary Commission: twenty-second report on the work of the Commission

1. This is the twenty-second report of the Eritrea-Ethiopia Boundary Commission, covering the period from 1 September to 20 December 2006. The previous report covered the period from 21 May to 31 August 2006.

2. On 29 September 2006, the Security Council adopted resolution 1710 (2006), which called upon:

- Eritrea to reverse its restrictions on UNMEE
- Ethiopia to "accept fully and without delay the final and binding decision of the Eritrea-Ethiopia Boundary Commission (EEBC) and take immediately concrete steps to enable, without preconditions, the Commission to demarcate the border completely and promptly"
- Both Parties to cooperate fully with the EEBC, stressing that the "primary responsibility for the implementation of the Algiers Agreements" lay with the Parties
- Both Parties to "implement completely and without further delay or preconditions the decision of the EEBC and to take concrete steps to resume the demarcation process"
- Both Parties to provide UNMEE with necessary assistance in the performance of its duties, including assisting the EEBC

3. The Commission, taking note of that resolution, wrote to the Parties on 6 October asking them to inform the Commission "of the actions which each proposes to take to comply with the Council's specific requests". To date, neither Party has replied to this request, although the Commission has received a letter from Eritrea, dated 22 October 2006, reiterating that "the way forward lies in the full and unequivocal acceptance of the EEBC Award by Ethiopia, and in the expeditious implementation of the Award on the basis of the Algiers Agreement and the Commission's 8 July 2002 Demarcation Directions".

4. The Commission also took note of the "Press Statement on Ethiopia-Eritrea" delivered by the President of the Security Council on 17 October 2006, especially the expression of the Council's "unwavering commitment to the peace process, including the full and expeditious implementation of the Algiers Agreements and implementation of the final and binding decision of the EEBC".

5. The Commission, in paragraph 9 of its twenty-first report, indicated that it would schedule a further meeting in November 2006 "to examine the situation as it then stands and, in particular, how in the circumstances it may best carry forward the demarcation of the boundary".

6. On 8 November 2006, the Commission sent a letter of invitation to the Parties to attend a meeting on 20 November 2006 at the Permanent Court of Arbitration in The Hague "to consider the further procedures to be followed in connection with the demarcation of the boundary between Eritrea and Ethiopia". Both Parties declined the Commission's invitation: Ethiopia by letter dated 13 November 2006; and

Eritrea by letter dated 16 November 2006. In its letter, Ethiopia made a number of criticisms of the Commission which the Commission felt ought not to be left unanswered. Accordingly, on 27 November 2006, it sent a detailed response which it has asked the United Nations Secretary-General to publish as a Security Council document, so that it may receive the same circulation as the Ethiopian letter. As that has not yet appeared, a copy is attached hereto (see enclosure).

7. Notwithstanding the absence of the Parties, the Commission met at the Permanent Court of Arbitration in The Hague on 20 November 2006 in order to consider how best to advance the demarcation. At this meeting, the Commission received the views of a number of the Witnesses to the Algiers Agreement.

8. Following the meeting, the Commission issued a Statement dated 27 November 2006. In this Statement, the Commission set out its approach to demarcation in light of the obstacles the Parties had placed in its way. It identified "the location of points for the emplacement of pillars as a physical manifestation of the boundary on the ground"[a] by means of precise coordinates determined with the assistance of high resolution aerial photography and modern techniques of image processing and terrain modelling in the Central and Western Sectors and field assessment in the Eastern Sector. These locations have been marked on 1:25,000 scale maps prepared in the Cartographic Section of the United Nations Secretariat.

9. In paragraph 22 of its Statement, the Commission said:

> "As the Commission evidently cannot remain in existence indefinitely, it proposes that the Parties should, over the next 12 months, terminating at the end of November 2007, consider their positions and seek to reach agreement on the emplacement of pillars. If, by the end of that period, the Parties have not by themselves reached the necessary agreement and proceeded significantly to implement it, or have not requested and enabled the Commission to resume its activity, the Commission hereby determines that the boundary will automatically stand as demarcated by the boundary points listed in the Annex hereto and that the mandate of the Commission can then be regarded as fulfilled. Until that time, however, it must be emphasized that the Commission remains in existence and its mandate to demarcate has not been discharged. Until such time as the boundary is finally demarcated, the Delimitation Decision of 13 April 2002 continues as the only valid legal description of the boundary."

10. In paragraph 28 of its Statement, the Commission further stated that "During the coming 12 months, the Commission will remain willing to provide assistance in emplacing the boundary pillars if the Parties jointly so request and provide assurances of cooperation and security".

11. Neither Party has as yet responded to the Statement. Until the Parties request the Commission to provide assistance, the Commission is closing its Field Office in Addis Ababa and reducing its activities in the Cartographic Section of the United Nations Secretariat.

12. Finally, the Commission regrets that Ethiopia, despite repeated reminders since 21 May 2006, has still not paid the contribution to the work of the Commission presently due from it, as required by Article 4 (17) of the Algiers Agreement. The

[a] Statement of the Eritrea-Ethiopia Boundary Commission, para. 20. Available at www.pca-cpa.org.

Commission has, therefore, been obliged to request access to the United Nations Trust Fund for Eritrea and Ethiopia in order to meet its commitments.

(*Signed*) Sir Elihu **Lauterpacht**
President of the Eritrea-Ethiopia Boundary Commission
21 December 2006

Enclosure

Attachment to paragraph 6 of the twenty-second report of the Eritrea-Ethiopia Boundary Commission: letter dated 27 November 2006 from the President of the Commission to the Minister of Foreign Affairs of Ethiopia

I have received and read with care your letter to me of 13 November 2006. Although it is not usual for international tribunals to respond to criticisms made by a discontented party, it is not possible for the Commission to leave your observations without some response — the more so as you have already given much publicity to your letter and have requested that it should be published as a Security Council document. I do not reply in full detail because the Commission's understanding of the facts is set out in the Statement which it is issuing today, of which I attach a copy. Nonetheless, with great respect, I have to tell you that, insofar as your letter purports to set out facts, those that it states are, regrettably, in significant detail wrong or highly selective.

At the outset, as a striking example of misleading selection, I refer to the manner in which, towards the end of your letter, you refer to the statement made by the President of the Security Council on 17 October 2006. You quote the whole of that statement with the exception of the highly relevant final paragraph bearing on the conduct of Ethiopia. This reads as follows: "Members of the Security Council call on Ethiopia to implement fully the EEBC decision". This was not the first time that the Security Council has called on Ethiopia to fulfil its obligations in respect of the Demarcation Decision. Nor is Ethiopia's failure to respond positively to such a call the first time that it has disregarded the call of the Security Council. It is a matter of regret that Ethiopia has so persistently maintained a position of non-compliance with its obligations in relation to the Commission.

You again put forward Ethiopia's contention that the Commission's procedure "does not conform with international practice and does not allow sufficient consideration of anomalies and impracticabilities as between the lines set out in the April 2003 Delimitation Decision and the realities on the ground". (The Decision was actually rendered a year earlier than the date you give.) The Commission has met this contention in detail in its Observations of 21 March 2003. There the Commission explained that it was not empowered by the Algiers Agreement to vary the line of delimitation that it had determined on the basis of the evidence before it. Indeed, the Commission is expressly prohibited from doing so by the provision in the Algiers Agreement that "the Commission shall not have the power to make decisions *ex aequo et bono*" (Article 4 (2)). The prohibition of recourse to *ex aequo et bono* can only mean that the Commission must implement what it finds to be the strict legal position in accordance with the terms and procedures clearly prescribed by the Parties.

You complain of the conduct of Eritrea, saying that it "has refused to heed either the Commission's requests or the Security Council's demand" and you observe that "under the circumstances, I cannot imagine that appeasement of Eritrea is the appropriate step". There is no basis for the suggestion that the Commission has been appeasing Eritrea. Nor can such a suggestion, however unfounded, obscure the fact that Ethiopia has itself been in breach of its obligations under the Algiers Agreement in several important respects. It is sufficient here to mention one serious

one, namely, Ethiopia's continued failure to comply with the Commission's Order of 17 July 2002 requiring Ethiopia forthwith to arrange for the return to Ethiopian territory of those persons in Dembe Mengul who were moved from Ethiopia pursuant to an Ethiopian resettlement programme since 13 April 2002 and to report to the Commission on the implementation of this order by 30 September 2002. Ethiopia has made no report to the Commission. A more detailed account of Ethiopia's lack of cooperation and breaches of its obligations is set out in today's Statement of the Commission.

You state that "it is impossible to understand or accept the Commission's plan to issue a Demarcation Decision, notwithstanding the clear understanding by the Parties and Witnesses to the Algiers Agreement that the final demarcation would be impossible without a cooperative process with a view to understanding and dealing with anomalies and impracticabilities". A "cooperative process", it is true, is important if it can be achieved. What you do not mention is the fact that Ethiopia has by its conduct on many occasions repeatedly obstructed the Commission's field personnel and prevented them from carrying out the necessary investigations in the field and made a "cooperative process" impossible. Ethiopia's actions in this respect preceded the more recent episodes in which Eritrea's conduct, largely by making it impossible for UNMEE to provide necessary assistance to the Commission's field personnel, has contributed to the impasse.

The Commission does not contest the assertion that its approach to demarcation by way of setting out coordinates indicating precise Boundary Points was not part of its original intention. Its intention had been to go on the ground and, in consultation and cooperation with the Field Liaison Officers of the Parties, to establish the locations for the emplacement of boundary pillars. Despite repeated initiatives on the part of the Commission supported by requests of the Security Council that the Parties cooperate, Ethiopia, for one, has made this approach impossible. The Commission cannot be left in limbo as a body charged with a function that the very Parties creating it have prevented it from performing.

One of the elements in Ethiopia's complaints is that Eritrea is guilty of the same obstruction. Eritrea's non-cooperation with the Commission only really developed after Ethiopia insisted that the boundary should be altered to meet with what Ethiopia chose to call "anomalies and impracticabilities", despite the clear statements of the Commission that this could not be done. When asked to confirm its continuing acceptance of the Delimitation Decision, Ethiopia repeatedly qualified its position by saying that it wished negotiations to take place regarding such "anomalies and impracticabilities". Eritrea's insistence on strict adherence to the terms of the Delimitation Decision was a position which it was entitled to adopt in accordance with the Algiers Agreement.

You place great emphasis on "the need for dialogue and support by neutral bodies to help the two Parties make progress in demarcation and normalization of their relations". Of course, "the normalization of relations" is a desirable objective but that is a matter that falls outside the scope of the Commission's mandate, which is solely to delimit and demarcate the border. The scope for "dialogue" is limited to what is necessary between the Commission and the Parties to further the actual process of demarcation on the ground. There is no room within the framework of the Algiers Agreement for the introduction of "neutral bodies" into the demarcation process.

You ask "Why has the Commission abruptly and without notice chosen to abandon the process for demarcation embodied in its rules, instructions and decisions?" The answer is that the Commission has been unable to make progress, initially, because of Ethiopia's obstruction and, more recently, because Eritrea has followed a similar course. Matters cannot be left in this uncertain condition. Something must be done. You will see from today's Statement of the Commission attached to this letter that the Commission has not abandoned the idea of pillar emplacement. In that Statement the Commission again provides the Parties with an opportunity to cooperate with it in the pillar emplacement process. Only if no real progress is made during the next 12 months will the Commission resort to demarcation by coordinates alone to identify boundary point locations.

You complain about the Commission's "engagement" with the Security Council. You disregard the fact that the Commission has since its inception been "engaged" with the Security Council by reason of the Commission's quarterly reports to the Secretary-General of the United Nations, which have then been annexed by him to his own reports to the Security Council and have formed the basis of numerous references to the situation and requests to the Parties by the Security Council. Moreover, the Security Council has repeatedly shown its concern with the process of demarcation by the adoption of a number of resolutions calling upon Ethiopia, and more recently Eritrea also, to comply with the terms of the Algiers Agreement.

Your letter seeks to blame the Commission for Ethiopia's failure to meet its obligations under the Algiers Agreement. Such blame is entirely misplaced. The truth of the matter appears to be that Ethiopia is dissatisfied with the substance of the Commission's Delimitation Decision and has been seeking, ever since April 2002, to find ways of changing it. This is not an approach which the Commission was empowered to adopt and is not one to which the Commission can lend itself.

I regret that it has been necessary to address you in such direct terms but your letter — and the publicity that you have given it — have left me with no alternative. It would be unacceptable for an international tribunal to be exposed to the kind of criticism which you have lodged without replying to it in necessary detail.

(*Signed*) Sir Elihu **Lauterpacht**
President of the Eritrea-Ethiopia Boundary Commission